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October 21, 2008

John C. Kadlic, City Attorney
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Dear Mr. Kadlic:

By letter dated August 4, 2008, you requested the assistance of the Office of the Attorney General (Office) in determining whether the office of Mayor of the City of Reno (Mayor) is separate and distinct from that of a Reno City Council member and whether term limits are applicable to the Mayor's position. If term limits apply to the Mayor, you question whether they apply separately from the limits applicable to a City Councilman position.

QUESTION ONE

Is the office of Mayor, which under the Reno City Charter, possesses both unique executive powers and legislative power, subject to term limits established in Article 15, § 3 of the Nevada Constitution?

ANALYSIS

With respect to term limits, the Nevada Constitution provides:

2. No person may be elected to any state office or *local governing body* who has served in *that office*, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution.

CONST. NEV. art. 15, § 3 (emphasis added).

Your letter references Op. Nev. Att'y Gen. No. 96-23 (August 9, 1996) (AGO 96-23) which examined the constitutional provision and the applicability of voter-approved term limits to various elected local offices. AGO 96-23 determined that term limitations apply to officials who serve on "local governing bodies" and whose main functions are legislative rather than executive.

That the Reno City Council constitutes a *local governing body* responsible for legislative and policy decisions is axiomatic. Because he or she is a voting member of the Council, the Mayor's duties are therefore legislative in part. Likewise, it is clear that the Reno City Council is described as a body "made up of seven people elected to make policy decisions for Reno City government."¹ The Reno City Council sets priorities, approves budgets, and addresses issues facing the City of Reno.

The Mayor's duties, however, extend beyond those of the City Councilmen. Under the Reno City Charter, the offices of Mayor and City Councilman are described in the legislative department of the city. See Reno City Charter, art. II, § 2010.² But the Mayor's additional duties are enumerated in Article III which pertains to the Executive Department.

Section 3.010 provides:

1. The Mayor:
 - (a) Shall serve as a member of the City Council and preside over its meetings.
 - (b) Shall not have any administrative duties.
 - (c) Must be recognized as the head of the City government for all ceremonial purposes.

¹ See Reno City Council's website at: www.cityofreno.com

² Reno City Charter, art. II, § 2.010 provides:

1. The legislative power of the City is vested in a City Council consisting of six Councilmen and a Mayor.
2. The Mayor and Councilmen must be qualified electors within the City. Each Councilman elected from a ward must continue to live in that ward for as long as he represents the ward.
3. The Mayor and one Councilman represent the City at large and one Councilman represents each ward. The Mayor and Councilmen serve for terms of 4 years.
4. The Mayor and Councilmen are entitled to receive a salary in an amount fixed by the City Council.

(d) Shall determine the order of business at meetings pursuant to the rules of the City Council.

(e) Is entitled to vote and shall vote last on all roll call votes.

(f) Shall take all proper measures for the preservation of the public peace and order and for the suppression of riots and all forms of public disturbance, for which he is authorized to appoint extra policemen temporarily and without regard to Civil Service rules and regulations, and to call upon the Sheriff of Washoe County, or, if that force is inadequate, to call upon the Governor for assistance.

(g) Shall perform such other duties, except administrative duties, as may be prescribed by ordinance or by the provisions of Nevada Revised Statutes which apply to a mayor of a city organized pursuant to the provisions of a special charter.

2. At the first regular City Council meeting in November of each year, the City Council shall elect one of the Councilmen to be Assistant Mayor. That person:

(a) Holds that office and title, without additional compensation, for a term of 1 year or until removed after a hearing for cause by a vote of six-sevenths of the City Council.

(b) Shall perform the duties of Mayor during the absence or disability of the Mayor.

(c) Shall act as Mayor if the office of Mayor becomes vacant until the vacancy is filled pursuant to section 1.070 of this Charter.

Reno City Charter, art. III, § 3.010.

Thus just as AGO 96-23 observes, the Mayor has both executive and legislative functions.³

You have suggested that this Office determine the "main function" of the Mayor's office in order to answer the question whether the Mayor is subject to term limits. We do not agree, however, this is the appropriate test. As we stated in Op. Nev. Att'y Gen. 96-23:

³ Although the Reno City Charter vests in the City Manager the task of Chief Administrator, the Reno Mayor has his own set of executive responsibilities set forth in the City Charter.

[I]f the creating instrument indicates the mayor's *main function* is to be an administrator for the city, *and* the mayor does not exercise legislative power as a member of the city council, then the mayor would not be subject to term limits. If, on the other hand, the mayor functions as a member of the city council, a governing body, then term limits would apply to that position as well as to the other members of the city council.

Op. Nev. Att'y Gen. 96-23 (emphasis added). Since the Mayor does function as a member of the council and exercises the legislative powers of a councilman, he or she is subject to term limits. It is unnecessary to determine, for this purpose, what the main function of the office of the Mayor is.

CONCLUSION TO QUESTION ONE

The office of Mayor is subject to term limits because the Mayor performs legislative, not just executive and administrative functions.

QUESTION TWO

Is the office of Mayor the same as the office of Reno City Councilman for purposes of determining term limits?

ANALYSIS

The ultimate question that you ask is whether the Mayor's office and the office of City Councilman are sufficiently distinct to be considered separate positions so that time in office for one position would not be counted towards the term limitations of the other. Although there are overlapping functions between the Mayor and City Councilman positions, relating primarily to their participation on the City Council, it is our opinion that the two positions are nevertheless separate and distinct. The voters certainly understand that the offices are distinct; they cast votes for Mayor and City Councilman respectively, and the Mayor has additional independent executive duties which are distinguishable from other City Councilman positions. While the City Manager is considered the Chief Executive and Administrative Officer⁴ of the City of Reno, the Mayor has his own designated executive functions in addition to ceremonial ones. Cf. La. Att'y Gen. Op. No. 08-0082 (June 11, 2008) ("It is the conclusion of this office that [term limits ordinance] provides no impediment to you again seeking the office of city councilman after your term as Mayor is completed").

⁴ Reno City Charter, § 3.020.

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CONCLUSION TO QUESTION TWO

The offices of Mayor and City Councilman are two separate offices, and time in office served by an incumbent in one does not count towards term limitations for the other.

Sincerely,

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